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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,816	07/22/2003	Leon M. Silverstone	BIOSCI.001C1	6648
20995	7590	01/11/2006	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			GREENE, DANA D	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/624,816	<b>Applicant(s)</b> SILVERSTONE, LEON M.	
	<b>Examiner</b> Dana D. Greene	<b>Art Unit</b> 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10/28/05.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14, 17-19, 22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 17-19, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)     | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Claims 1-14, 17-19, 22, and 23 remain rejected under the same references disclosed in the Office Action mailed April 29, 2005. The Examiner has given full consideration to the Applicant's response filed on October 28, 2005. However, Applicant's arguments are not persuasive and do not overcome the original rejection.

Examiner has alleged a prima facie case of anticipation with respect to claims 1-14 and 17-19 and Examiner cites Diethelm (US 4,913,148, hereinafter "Diethelm"). Further, claims 22 and 23 remain unpatentable over Diethelm in view of Lathrop (US 5,133,352, hereinafter "Lathrop").

Examiner has cited areas of Diethelm, which suggest a method of treating viral infections where the second electrode defines another closed contour configuration that surrounds the closed contour of the first electrode.

Examiner has pointed to the specific sites in Diethelm and Lathrop that they be combined in the manner suggested. With this suggestion, it would have been obvious to one of ordinary skill in the art to combine the teachings of Diethelm with the considered housing configuration found in Lathrop for the purpose of fitting the electrical stimulation device comfortably in the hand of the user.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13, 14, and 17-19 stand rejected under 35 U.S.C. §102(b) as being anticipated by Diethelm. Diethelm is considered to disclose:

a method of treating viral infections comprising applying electrical stimulation to the skin or mucosa of a patient, wherein said electrical stimulation is applied via first and second electrodes located on a surface as a series of electrical pulses (see col. 3, ln. 45-55 and col. 4, ln. 30-45, Diethelm). The disclosed application of electrical stimulation by electrodes as monopolar pulses is considered to teach the claimed method of electrical stimulation application because both treat viral infections using a series of pulses of electrical stimulation to a patient's skin;

wherein the first electrode defines a closed contour configuration that surrounds a portion of the surface and the second electrode defines another closed contour configuration that surrounds the closed contour of the first electrode (see col. 3, ln. 55 – col. 4, ln. 5, Diethelm). The disclosed circular contact surfaces of the electrodes are considered to anticipate the claimed contour configuration because both sets of electrodes are placed in contact with the patient's skin for delivery of electrical energy;

and wherein different pulses in said series have different maximum amplitudes (see col. 4, ln. 35-45, Diethelm). The disclosed pulse range and frequency range is considered to anticipate the claimed pulse differences because both methods are adapted for pulses that different in amplitude or frequency and that alternate between AC and DC pulses.

Referring to claims 9-12, Diethelm is considered to teach an adjustable current intensity that corresponds with respective skin resistance (see abstract, Diethelm).

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According to Diethelm, during treatment current intensity (mA) should be adjusted such that the patient feels a discernible, but not painful, throbbing (pulsation) at the surface of the skin. It will often be necessary to increase current intensity after approximately five minutes so as to counteract habituation and reach initial conditions (see col. 2, ln. 31-36, Diethelm).

With reference to claims 17-19, Diethelm is considered to disclose first and second closed contours comprising concentric circular, rectangular, and square contours (see col. 3, ln. 63 – col. 4, ln. 5, Diethelm).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Diethelm in view of Lathrop. Diethelm is considered to disclose the claimed invention as discussed above, under the anticipatory rejection, except for the claimed housing configuration. Diethelm is considered to disclose the counter and LCD display (see col. 7, ln. 1-10, Diethelm). The disclosed display unit and measuring unit are considered to anticipate the claimed counter and display because both show the number of treatments applied.


However, Lathrop is considered to disclose the claimed housing and electrical signal source (see col. 6, ln. 55-65, Lathrop). It would have been obvious to one of ordinary skill in the art to combine the teachings of Diethelm with the considered housing configuration teaching found in Lathrop for the purpose of fitting the electrical stimulation device comfortably in the hand of the user.

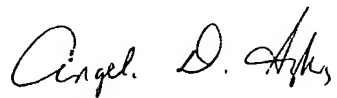
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dana D. Greene whose telephone number is (571) 272-7138. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Dana D. Greene



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